

JUVENILE TRANSFERS: CIRCUIT COURT AND BEYOND

Presented by M. Keith Siskin, Circuit Court Judge

March 27, 2014

(1) Location of detention pending trial:

Juvenile Judge may order defendant held at local juvenile detention center, or at adult jail separate and removed from adult inmates. T.C.A. § 37-1-134(i). However, Circuit Judge may require that defendant be held at adult jail, separate and removed from adult inmates. Id.

(2) Location of detention upon conviction:

(A) After defendant has been sentenced to an adult institution, the Department of Correction may file a petition requesting the Circuit Court to allow the Department to transfer the defendant to an institution for juvenile delinquents administered by DCS. T.C.A. § 37-1-134(h). If petition is granted, defendant may be held at DCS facility until his 18th birthday, at which time he may be transferred to an adult institution if there is time remaining on his term; if the term expires prior to the 18th birthday, defendant shall be released. Id.

(B) If defendant was under age 16 at time of offense, defendant shall be housed in a juvenile correctional facility until age 16, at which time the Circuit Court may order defendant transferred to adult facility - separate and removed from adult inmates. T.C.A. § 37-1-134(j).

(C) If defendant was age 16 or older at time of offense, defendant shall be housed in a juvenile correctional facility unless the Circuit Court orders defendant transferred to adult facility - separate and removed from adult inmates. T.C.A. § 37-1-134(k).

(3) No “Acceptance Hearings” in Circuit Court:

Unless the transfer hearing was presided over by a nonlawyer judge in Juvenile Court, there is no “acceptance hearing” in Circuit Court, and the Circuit Court has no authority to decline jurisdiction. *See State v. Reed*, No. M2009-00887-CCA-R3-CD, 2010 WL 3432663 at *7 (Tenn. Crim. App. 2010), *perm. app. denied* 1/13/11. This process has been found not to violate due process. *See State v. Darden*, 12 S.W.3d 455, 459-60 (Tenn. 2000).

(4) Once an adult, always an adult!

If the Juvenile Court transfers the child to Circuit Court, the child “shall thereafter be dealt with as an adult as to all pending and subsequent criminal charges.” T.C.A. § 37-1-134(c). The only exception is when the child is acquitted or the charges are otherwise dismissed in Circuit Court. Id.

(5) Defendant may appeal transfer decision to the Court of Criminal Appeals:

(A) However, the Circuit Court must dispose of the case on its merits even though the Appellate Court will later determine whether the decision of the Juvenile Court to transfer the defendant was correct. *See Reed* at *7. In order to preserve the issue for appeal, the defendant must either (1) enter a plea of not guilty in Circuit Court, or (2) reserve the issue on a plea of guilty or nolo contendere pursuant to Tenn. R. Crim. P. 37(b). Id.

(B) On appeal, the Court of Criminal Appeals does not decide where the preponderance of evidence lies, but whether there were reasonable grounds for the Juvenile Court to believe that the criteria of T.C.A. § 37-1-134(a)(4) were present. *See State v. Gray*, No. W2011-01059-CCA-R3-CD, 2013 WL 475015 at *7 (Tenn. Crim. App. 2013), *perm. app. denied* 5/9/13. The Juvenile Judge’s discretionary decision to allow a juvenile to be treated as an adult should not be disturbed on appeal, if there was probable cause to believe that the juvenile committed the crime and the evidence at the hearing showed that the juvenile was not mentally impaired and should be legally restrained. Id.

(6) Juvenile transfer hearings are subject to Post-Conviction Relief Petitions:

See, e.g., Mayes v. State, No. W2012-01470-CCA-R3-PC, 2013 WL 6730105 (Tenn. Crim. App. 2013) (finding that attorney’s representation fell below reasonable standard of competence, and criticizing attorney’s assertion that it was his common practice not to call any witnesses at transfer hearings due to time constraints and heavy case loads). Post-conviction relief was nonetheless denied in this case because petitioner failed to prove that attorney’s deficient performance prejudiced him.

(7) Mandatory life sentences without parole for juveniles are unconstitutional:

(A) The Eighth Amendment (cruel & unusual punishment) forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders. *Miller v. Alabama*, 132 S.Ct. 2455 (2012). A Judge or jury must have the opportunity to consider mitigating circumstances before imposing the harshest possible penalty for juveniles. Id. at 2475.

(B) The Tennessee Court of Criminal Appeals recently held that the Miller rule is a new rule of constitutional law that should be applied retroactively. *See Darden v. State*, No. M2013-01328-CCA-R3-CD, 2014 WL 992097 at *10 (Tenn. Crim. App. 2014). Additionally, the Darden Court rejected the petitioner's argument (in a post-conviction relief case) that Tennessee's mandatory minimum sentencing structure for juveniles tried as adults and convicted of first degree murder violates the Eighth Amendment under Miller. *Id.* at *11. The Darden Court held that, since Tennessee's sentencing statutes provide that life imprisonment *with* the possibility of parole is an option for juveniles who are tried as adults and convicted of first degree murder, the Miller rule is not violated. *Id.*